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In re Application of :
KOCHI, Toshifumi et al. : DECISION ON
Application No.: 10/561,614 :
PCT No.: PCT/JP04/09713 : PETITION
Int. Filing Date: 08 July 2004 :
Priority Date: 10 July 2003 : UNDER 37 CFR 1.47(a)
Attorney's Docket No.: 107348-00547 :
For: Engine-Driven Generator :
:

This decision is in response to the petition under 37 CFR 1.47(a), filed 28 February 2007, to permit the applicants to file the above-captioned application on behalf of the non-signing inventor, Toshifumi Kochi. The petition under 37 CFR 1.47(a) is DISMISSED.

BACKGROUND

On 08 July 2004, applicants filed international application PCT/JP04/09713, claiming a priority date of 10 July 2003. The thirty-month for paying the basic national fee in the United States expired at midnight on 10 January 2006.

On 20 December 2005, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the requisite basic national fee. An oath or declaration was not submitted.

On 28 November 2006, the United States Designated/Elected Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration and a surcharge for filing the oath and declaration later than 30 months from the priority date were required.

On 28 February 2007, applicants filed the present petition accompanied by the requisite petition fee, a one-month extension of time, a declaration executed on behalf of non-signing inventor Toshifumi Kochi, the surcharge for late filing of the declaration and a statement by Dr. Soichiro Nomura indicating the health condition of non-signing inventor Toshifumi Kochi.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) a statement of the last known address of the missing inventor, (3) an oath or declaration by each applicant on his or her own behalf and on behalf of the non-signing joint inventor and, (4) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort.

As to items (1) and (2), applicants have submitted the correct petition fee of \$200.00 under 37 CFR 1.17(g) and a statement of the last known address of the non-signing inventor.

With regard to item (3), applicants have filed a declaration executed by the other cooperating inventors and containing an unsigned signature block for the non-signing inventor. This declaration complies with 37 CFR 1.497(a)-(b) and is accepted. Hence, item (3) is satisfied.

With regard to item (4), applicants have not provided any evidence that non-signing inventor Toshifumi Kochi was presented with a copy of the application papers (specification, claims, drawings and oath or declaration). Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, claims, drawings, and oath or declaration) to the non-signing inventor for signature. Copies of documentary evidence such as a certified mail return receipt, cover letter of instructions, telegrams, etc., which support a finding that a complete copy of the application papers had been sent to the applicant should be made a part of the declaration or affidavit. Therefore, item (4) has not been satisfied.

Furthermore, MPEP 409.03(d)(I) states that:

...the fact that an inventor is hospitalized and/or not conscious is not an acceptable reason for filing under 37 CFR 1.47. 37 CFR 1.43 may be available under these circumstances. See MPEP §409.02. Such a petition under 37 CFR 1.47 will be dismissed as inappropriate.

Here, applicants' evidence that non-signing inventor Toshifumi Kochi cannot be reached after diligent effort is based on the declaration of Dr. Soichiro Nomura who describes non-signing inventor Toshifumi Kochi requiring "rest for twelve weeks from December 25, 2006." In view of MPEP 409.03(d)(I), it is submitted that the provided evidence "is not an acceptable reason for filing under 37 CFR 1.47." As shown above, applicants may file a petition under 37 CFR 1.43 if the conditions presented in MPEP §409.02 are satisfied.

As such, the instant petition filed under 37 CFR 1.47(a) on 28 February 2007, to permit the applicants to file the above-captioned application on behalf of the non-signing inventor Toshifumi Kochi, is inappropriate.

CONCLUSION

Applicant's petition to permit the applicants to file the above-captioned application on behalf of the non-signing inventor Toshifumi Kochi is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.



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